

the Government (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances; and

(C) Include an analysis of whether the cost is excessive, taking into account factors such as—

(1) The differential between the freight charges proposed by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(2) A comparison of U.S.-flag rates charged on comparable routes;

(3) Efficiency of operation regardless of rate differential (*e.g.*, suitability of the vessel for the required transportation in terms of cargo requirements or vessel capacity, and the commercial reasonableness of vessel positioning required); and

(4) Any other relevant economic and financial considerations.

(ii) The contracting officer must forward the report to—

(A) The Commander, MSC, through the Contracts and Business Management Directorate, MSC; or

(B) The Commander, through the SDDC global e-mailbox: [sddc.ops.ffw@us.army.mil](mailto:sddc.ops.ffw@us.army.mil) and the Principal Assistant Responsible for Contracting, SDDC.

(iii) If in agreement with the contracting officer, the Commander, MSC, or the Commander, SDDC, will forward the report to the Secretary of the Navy or the Secretary of the Army, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

[65 FR 50146, Aug. 17, 2000, as amended at 67 FR 38021, May 31, 2002. Redesignated at 72 FR 49206, Aug. 28, 2007. 75 FR 51418, Aug. 20, 2010]

#### **247.573-2 Direct purchase of ocean transportation services.**

(a) This subsection applies when ocean transportation is the principal purpose of the contract, including—

(1) Time charters;

(2) Voyage charters;

(3) Contracts for charter vessel services;

(4) Dedicated contractor contracts for charter vessel services;

(5) Ocean bills of lading; and

(6) Subcontracts under Government contracts or agreements for ocean transportation services.

(b) Coordinate these acquisitions, as appropriate, with the U.S. Transportation Command, the DoD single manager for commercial transportation and related services, other than Service-unique or theater-assigned transportation assets, in accordance with DoD 5158.4, United States Transportation Command.

(c) All solicitations within the scope of this subsection must provide—(1) A preference for U.S.-flag vessels in accordance with the 1904 Act;

(2) An evaluation criterion for offeror participation in the Voluntary Intermodal Sealift Agreement; and

(3) An evaluation criterion considering the extent to which offerors have had overhaul, repair, and maintenance work for all covered vessels in an offeror's fleet performed in shipyards located in the United States or Guam. Work performed in foreign shipyards shall not be evaluated under this criterion if—

(i) Such work was performed as emergency repairs in foreign shipyards due to accident, emergency, Act of God, or an infirmity to the vessel, and safety considerations warranted taking the vessel to a foreign shipyard; or

(ii) Such work was paid for or reimbursed by the U.S. Government.

(d) Do not award a contract of the type described in paragraph (a) of this subsection for a foreign-flag vessel unless—

(1) The Commander, MSC, or the Commander, SDDC, determines that no U.S.-flag vessels are available.

(i) The Commander, MSC, and the Commander, SDDC, are authorized to make any determinations as to the availability of U.S.-flag vessels to ensure the proper use of Government and private U.S. vessels.

(ii) The contracting officer must request such determinations—

(A) For voyage and time charters, through the Contracts and Business Management Directorate, MSC; and

(B) For ocean and intermodal transportation of DoD and DoD-sponsored cargoes, as applicable under contracts awarded by SDDC, including contracts

for shipment of military household goods, through the Chiefs of the SDDC Ocean Cargo Clearance Authority.

(iii) In the absence of regularly scheduled U.S.-flag service to fulfill stated DoD requirements under SDDC solicitations or rate requests, the Commander, SDDC, may grant, on a case-by-case basis, an on-going nonavailability determination for foreign-flag service approval with pre-determined review date(s);

(2) The contracting officer determines that the U.S.-flag carrier has proposed to the Government freight charges that are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander, MSC, or the Commander, SDDC; or

(3) The Secretary of the Navy or the Secretary of the Army determines that the proposed freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.

(i) After considering the factors in 247.573-1(c)(3)(i)(A) and (B), if the contracting officer concludes that the freight charges proposed by U.S.-flag carriers may be excessive or otherwise unreasonable, the contracting officer must prepare a report in determination and finding format that includes, as appropriate—

(A) An analysis of the carrier's costs in accordance with FAR Subpart 15.4, or profit in accordance with 215.404-4. The costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels;

(B) A description of efforts taken pursuant to FAR 15.405, to negotiate a reasonable price. For the purpose of FAR 15.405(d), this report is the referral to a level above the contracting officer; and

(C) An analysis of whether the costs are excessive (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration factors such as those listed at 247.573-1(c)(3)(i)(C).

(ii) The contracting officer must forward the report to—

(A) The commander, MSC, through the Contracts and Business Management Directorate, MSC; or

(B) The Commander, SDDC, through the Principal Assistant Responsible for Contracting, SDDC.

(iii) If an agreement with the contracting officer, the Commander, MSC, or the Commander, SDDC, will forward the report to the Secretary of the Navy or the Secretary of the Army, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

[65 FR 50147, Aug. 17, 2000. Redesignated and amended at 72 FR 49206, Aug. 28, 2007; 73 FR 70911, Nov. 24, 2008; 75 FR 51418, Aug. 20, 2010]

**247.573-3 Annual reporting requirement.**

(a) No later than February 15th of each year, departments and agencies shall—

(1) Prepare a report containing all information received from all offerors in response to the provision at 252.247-7026 during the previous calendar year; and

(2) Submit the report to: Directorate of Acquisition, U.S. Transportation Command, ATTN: TCAQ, 508 Scott Drive, Scott AFB, IL 62225-5357.

(b) The Director of Acquisition, U.S. Transportation Command, will submit a consolidated annual report to the congressional defense committees, by June 1st of each year, in accordance with Section 1017 of Public Law 109-364.

[72 FR 49206, Aug. 28, 2007, as amended at 73 FR 70911, Nov. 24, 2008]

**247.574 Solicitation provisions and contract clauses.**

(a) Use the provision at 252.247-7022, Representation of Extent of Transportation by Sea, in all solicitations except—

(1) Those for direct purchase of ocean transportation services; or

(2) Those with an anticipated value at or below the simplified acquisition threshold.

(b)(1) Use the clause at 252.247-7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, except those for direct purchase of ocean transportation services.

(2) Use the clause with its Alternate I in other than construction contracts, if any of the supplies to be transported are commercial items that are shipped